Corporate Social Responsibility; Philanthropy with Tax Burden or Image Making with Tax Management

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***Abstract*:- Corporate social responsibility becomes mandatory in India with effect of financial year 2013 by the virtue of section 135 of companies Act for specified corporate which is having net worth/turnover/profit above threshold. Many think that CSR is new concept. However, in our country, Kings have been practicing CSR for thousands of years. Institutions think that CSR is concept of Philanthropy, charity or burden given by Companies Act, 2013 which Specified corporate has to fulfill without any reason, even the expenses incurred on CSR is not allowable tax expenses under Income Tax Act, 1961. This leads double burden on Corporate. This paper is based on the conceptual study of the effect of convergent from institutional traditional approach to Strategical approach of CSR with tax management. It true that CSR expense does not form part of business, however benefit of exemption under Income Tax can be availed on several activities like contributions to prime minister relief fund, Rural development programmes, Scientific research expenditure which also find places in Schedule VII of Companies Act, 2013. Corporate social responsibility is a form of management that considers ethical issues in all aspects of the business. It depends how a business strategically formulate CSR polices of organization consistent with the provision of schedule VII of companies Act, 2013 so that without making any non-compliance of any provision of Companies act as well as Income tax act, organization can take the advantage of tax deduction simultaneously make help to uplift the society by more CSR expenses. This will increase the Goodwill of organization and lead the sale as People will prefer to buy the products of corporates who is engaged in CSR. Through proper tax planning and management corporate can save the tax which leads reduction in cost, minimize the cash outflow and maximize the shareholder fund.**

Key Word:- Corporate social responsibility, Strategical Management, Income Tax, Tax Management

INTRODUCTION

Corporate social responsibility becomes mandatory with effect from financial year 2013 by the virtue of section 135 of companies Act for specified corporate having net worth/turnover/profit above threshold. As per section 135 of Companies Act, 2013 specified corporate has to spend @ 2% of their profit in CSR. It was government strategy to share their own responsibility with the business. Many think that CSR is new concept. However, in our country, Kings have been practicing CSR for thousands of years. Even Kautilya's Arthastra speaks about this;

> *He makes it clear, that, while it is the Government's Basic Duty to maintain a society's well-being, even companies cannot stay away from this responsibility.*

Institutions think that it is the responsibility of government to maintain society and government put their responsibility with business in the form of CSR. Institutions think that CSR is concept of Philanthropy, charity or burden given by Companies Act, 2013 which a corporate has to fulfill without any reservation. Moreover, the expenses incurred on CSR is not allowable business tax expenses under Income Tax Act, 1961. It means if one has spent Rs 100/- in CSR, then it lead to Rs 130/- as organization has to pay tax on this amount. Thus the view of Institution is, CSR is burden as well as Philanthropy, and studies say this is not true.

Corporate social responsibility is a form of management that considers ethical issues in all aspects of the business. Strategic decisions of a company have both social and economic consequences. Social responsibility of a company is a main element of the strategy formulation process. Strategic management seeks to give the company a competitive advantage in the market. Intangible sources of competitive advantage, such as ethical management, have become important in recent years. A company that better incorporates social responsibility into its operations will be in a better position than competitors**.** For example, a small business that sources locally, offers discounts to senior citizens and volunteers for community causes will be in the good books of its local community. This can translate into customer loyalty and profitability.

Integration process can be used for Strategic Corporate social responsibility. There are several stages in the integration of corporate social responsibility in the company's strategic management process. Firstly, managers should try to embed ethical principles into the shared organizational culture. The main idea is to make ethical consideration a tacit part of the company's psyche. The mission statement and other strategic documents will be modified to reflect this emphasis. Secondly, a diagnosis of the company's current status and deficiencies should be made. The company determines what type of social responsibility is more attuned to its core activities and outside community. Finally, the corporate social responsibility approach is generalized. In this stage, acting ethically becomes second nature to the company and permeates all activities of the company.

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TAX MANAGEMENT AND CSR

There may three ways to minimizes the tax; **Tax Evasion, Tax avoidance, Tax Management**.

Tax evasion is the general term for any kind of efforts by taxpayers to evade taxes by illegal means. For example, incomplete or false tax reporting or otherwise acting in a fraudulent manner. In income taxation, this means declaring either less income (or profits or gains) than actually earned or overstating deductions.

Tax avoidance means the legal utilization of the tax regime to one's own advantage in order to reduce the amount of tax that is payable, by means that are within the law, or at least within the letter of the law. The tax avoider makes full and truthful disclosure of all the facts. In tax avoidance, legal formalities are used to get tax advantages. Tax avoidance transactions are either mainly or only made for tax purposes.

Tax Management (or tax mitigation) often refers to the transactions of taxpayers which are not, per se, against the purpose of the tax law. At least in the framework of the national tax system, the legislator has explicitly or implicitly accepted this kind of actions for tax purposes. Tax management involves planning in order to avail all exemptions, deductions and rebates provided in Act without making any noncompliance of any provision of act. Tax management is required for maximizing the cash inflow and minimizing the cash outflow. Tax Management is different from Tax avoidance and tax evasion.

Tax Management (planning) can be at the time of formulation of CSR Policy so that maximizing the CSR expenses and benefit of tax deduction of CSR expenses can be availed in legal manner.

For transparent tax management for CSR policy, first we discussed with the Legal provision of CSR and relevant section of Income Tax Act.

LEGAL PROVISION OF CSR

A new section 135 has been inserted in companies Act, 2013 mandating the certain class of companies to spend 2% of their profit on CSR. The relevant provision of section 135 is reproduced herebelow;

> **135.** (1) Every company having **net worth of rupees five hundred crore or more**, or **turnover of rupees one thousand crore or more** or a **net profit of rupees five crore or more** during any financial year shall constitute a Corporate Social Responsibility Committee of the Board consisting of three or more directors, out of which at least one director shall be an independent director.
>
> (2) The Board's report under sub-section (3) of section 134 shall disclose the composition of the Corporate Social Responsibility Committee.

(3) The Corporate Social Responsibility Committee shall,—

a) formulate and recommend to the Board, a Corporate Social Responsibility Policy which shall indicate the activities to be undertaken by the compay as specified in **Schedule VII**;
b) recommend the amount of expenditure to be incurred on the activities referred to in clause (a); and
c) monitor the Corporate Social Responsibility Policy of the company from time to time.

(4) The Board of every company referred to in sub-section (1) shall,—

a) after taking into account the recommendations made by the Corporate Social Responsibility Committee, approve the Corporate Social Responsibility Policy for the company and disclose contents of such Policy in its report and also place it on the company's website, if any, in such manner as may be prescribed; and

b) ensure that the activities as are included in Corporate Social Responsibility Policy of the company are undertaken by the company.

(5) The Board of every company referred to in sub-section (1), shall ensure that the company spends, in every financial year, **at least two per cent of the average net profits** of the company made during the three immediately preceding financial years, in pursuance of its Corporate Social Responsibility Policy:

Provided that the company shall give preference to the local area and areas around it where it operates, for spending the amount earmarked for Corporate Social Responsibility activities:

Provided further that if the company fails to spend such amount, the Board shall, in its report made under clause (o) of sub-section (3) of section 134, specify the reasons for not spending the amount.

Explanation.—For the purposes of this section "average net profit" shall be calculated in accordance with the provisions of section 198.

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CIRCULAR NO 1/2015 DATED 21.1.2015 OF INCOME TAX ACT

It has been explained by the CBDT in the circular no. 1/2015 Dated 21/1/2015:

"CSR expenditure, being an application of income, is not incurred wholly and exclusively for the purposes of carrying on business. As the application of income is not allowed as deduction for the purposes of computing taxable income of a company, amount spent on CSR cannot be allowed as deduction for computing the taxable income of the company. Moreover, the objective of CSR is to share burden of the Government in providing social services by companies having net worth/turnover/profit above a threshold. If such expenses are allowed as tax deduction, this would result in subsidizing of around one-third of such expenses by the Government by way of tax expenditure."

The Finance Act, 2014 and the above circular clarified that expenditure on CSR does not form the part of business expenditure and disallowed expenses under Income tax Act, 1961 however of the expenditure is made on Scientific Research, Eligible Projects for Rural development, Skill Development Projects, contribution made to Prime Minister Relief fund, benefit of exemptions can be availed in notified section of Income tax Act, 1961.

Discussion of some relevant section of Income Tax Act;

S No.	Section	Nature
1	35	Deduction of Expenditure on Scientific Research Capital as well as Revenue Exp.
2	35AC	Expenditure on Eligible Projects or Schemes
3	35CCA	Payments to Association & Institution for Carrying out Rural Development programmes
4	35CCD	Expenditure on skill development project notified by the board
5	36(1)(ix)	Applicable to Company who incurs expenditure on promotion of family planning amongst employees Revenue as well as capital expenditure
6	80G	Donation to certain Funds & Institutions
7	Rule 11K	Guidelines for recommending projects or schemes

In this paper, we are limited our focus only on the provision of section 35 AC along with Rule 11K of Income Tax Act, 1961 & Income Tax Rule, 1962 respectively.

Section 35 AC describes the provision related to Expenditure on Eligible Projects or Schemes. For the sake of convince., the Relevant provision of section 35 AC is reproduced herebelow;

Quote

"SECTION 35AC

1) Where an assessee incurs any expenditure by way of payment of any sum to a public sector company or a local authority or to an association or institution approved by the National Committee for carrying out any eligible project or scheme, the assesse shall, subject to the provisions of this section, be allowed a deduction of the amount of such expenditure incurred during the previous year :

   Provided that a company may, for claiming the deduction under this sub-section, incur expenditure either by way of payment of any sum as aforesaid or directly on the eligible project or scheme.

2) The deduction under sub-section (1) shall not be allowed unless the assessee furnishes along with his return of income a certificate-
   a) where the payment is to a public sector company or a local authority or an association or institution referred to in sub-section (1), from such public sector company or local authority or, as the case may be, association or institution;
   b) in any other case, from an accountant, as defined in the ***Explanation*** below sub-section (2) of section 288,

   in such form, manner and containing such particulars (including particulars relating to the progress in the work relating to the eligible project or scheme during the previous year) as may be prescribed."

Unquote

Rule 11K of Income Tax Rule, 1962 is related to guidelines for recommending projects or schemes. For the sake of convenience the provision of Rule 11K is reproduced here below;

In making recommendations to the Central Government with regard to any project or scheme for being notified in the Official Gazette as an eligible project or scheme, the National Committee shall satisfy itself that,

I. the project or scheme relates to the provisions of one or more of the following:
   a) construction and maintenance of drinking water projects in rural areas and in urban slums including installation of pump-sets, digging of wells, tube-wells and laying of pipes for supply of drinking water;
   b) construction of dwelling units for the economically weaker sections;
   c) construction of school buildings primarily for children belonging to the economically weaker sections of the society;
   d) establishment and running of non-conventional and renewable source of energy systems;

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e) construction and maintenance of bridges, public highways and other roads;
f) any other programme for uplift of the rural poor or the urban slum dwellers, as the National Committee may consider fit for support;
g) promotion of sports;
h) pollution control;
i) establishment and running of educational institutions in rural areas, exclusively for women and children upto 12 years of age;
j) establishment and running of hospitals and medical facilities in rural areas, exclusively for women and children upto 12 years of age;
k) establishment and running of creches and schools for the children of workers employed in factories or at building sites;
l) encouraging the production of bacteria induced fertilisers;
m) any programme that promotes road safety, prevention of accidents and traffic awareness;
n) construction of hostel accommodation for women or handicapped individuals or individuals who are of the age of sixty-five years or more;
o) establishment and running of institutions for vocational education and training in rural areas or towns which consist of population of less than five lakhs;
p) establishment and running of institutions imparting education in the field of engineering and medicine in rural areas or towns which consist of population of less than 5 lakhs;
q) plantation of softwood on degraded non-forest land;
r) any programme of conservation of natural resources or of afforestation;
s) relief and rehabilitation of handicapped individuals;

II. the benefit of the project or scheme shall flow to the public in general or to individuals belonging to the economically weaker sections of the society;
III. the applicant has the necessary expertise, personnel and other facilities for efficient implementation of the project or scheme;
IV. the applicant shall maintain separate accounts in respect of the eligible project or scheme.

SCHEDULE VII OF CSR RULES AND INCOME TAX ACT

From the bare perusal of above mentioned section of income tax and rules and Section 135 of companies act, 2013 and Provision contained in schedule VII of CSR, it can be observed that the if the expenditure of CSR is made in strategically way then benefit of deduction of CSR expenses can be take

Specific CSR Activities referred under Schedule VII to the 2013 Act and eligible deduction under Income Tax Act.

Specific CSR Activities referred under Schedule VII to the 2013 Act	Expenditure allowed under the relevant provisions of the Income-tax Act, 1961
Activities concerning Basic necessities of Life	
– Eradication of poverty, hunger and malnutrition	Section 35AC read with Rule 11K(I)(f) of Income-tax Rules, 1962
– promoting health care including preventive health care and sanitation including contribution to the Swach Bharat Kosh set-up by the Central Government for the promotion of sanitation and making available safe drinking water	Section 35AC r.w. Rule 11k (I)(a),(f),(j) of the 1962 Rules 80G(2)(iiihk)
Activities concerning Education	
– Promoting Education, including special education and employment enhancing vocational skills especially among children, women and elderly and the differently able	Section 35AC r.w. 11K(I)(c),(i),(o),(p),(s) of the 1962 Rules
– Livelihood enhancement programs	Section 35AC r.w. 11K(I)(j),(s) of the 1962 Rules
Activities addressing inequality and gender discrimination	
– Promoting gender equality	Section 35AC r.w. Rule 11K(I)(i) of the 1962 Rules
– Empowering women	Section 35AC r.w. Rule 11K(I)(i) of the 1962 Rules
– Setting up of homes and hostels for women and orphans	Section 35AC r.w. Rule 11K(I)(n) of the 1962 Rules
– Setting up old age homes, day care centre and such other facilities for senior citizens and	Section 35AC r.w. Rule 11K(I)(n) of the 1962 Rules
– Measures for reducing inequalities faced by socially and economically backward groups;	Section 35AC r.w. Rule 11K(I)(b) and (c) of the 1962 Rules
Activities concerning Care for environment	
– Ensuring environmental sustainability and ecological balance	Section 35AC r.w. Rule 11K(I) (d), (h), (l), (q), (r) of the 1962 Rule & 80G(2)(iiihl)
– Protection of flora and fauna, animal welfare, agro forestry	
– Conservation of natural resources and maintaining quality of soil, air and water including contribution to the Clean Ganga Fund set-up by the Central Government for rejuvenation of river Ganga.	
Activities concerning protection of National Heritage, Art and Culture	
– Protection of national heritage, art and culture including restoration of building and sites of historical importance and works of art	Section80G(2)(b)
– Setting up public libraries	

– Promotion & Development of traditional arts and handicrafts	
Activities concerning benefit to Armed Forces, veterans, war widows and their dependants	Section 80G(2)(ai) and 80G(2)(a)(iiihc)
– Measures for the benefit of armed forces, veterans, war widows and their dependents	
Activities concerning Sports	
– Training to promote rural sports, nationally recognised sports, Paralympics sports and Olympic sports	Section 35AC r.w. Rule 11K(I)(g)
Activities concerning national relief and welfare of Economically backward class of Society	
– Contribution to PM National relief fund or any other fund set up by the Central Government for socio-economic development	Section 80G(2)(a)(iii), 80G(2)(a)(iiia)
– Relief and welfare of the Schedules Casts, Schedules Tribes, Other backward castes, minorities and women	Section 35AC r.w. Rule 11K(I)(b),(c) and Rule 11K(ii) of the Income-tax Rules
Activities concerning Technology incubators	
– Contributions or funds provided to technology incubators located within academic institutions which are approved by Central Government	Section 35(2AA) and Section 80G(2)(iihi)
Activities concerning Rural Development	
– Rural Development Projects	Section 35AC and Section 35CCA
Activities concerning Slum Area Development	
– Slum Area Development Explanation.—For the purposes of this item, the term ‘slum area’ shall mean any area declared as such by the Central Government or any State Government or any other competent authority under any law for the time being in force.	

CONCLUSION AND FUTURE SCOPE OF STUDY

In view of above Provisions of Companies act, Income Tax act and rules, it can be concluded that the CSR is not concept of Corporate Philanthropy and tax burden, rather create Image of corporate and if CSR polices are designed strategically, benefit of deduction of CSR can be availed under Income Tax Act. It will minimize the cash outflow in tax form and maximize the shareholder returns.

The above study has been done as per the prevailing tax provision and rule. Now a days tax laws and rules are increasingly change time to time. There may future scope of studies to locate further section for tax planning and formulation of CSR policy accordingly.

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